



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2007-28043]**

**Hours of Service of Drivers; Renewal and Expansion of American Pyrotechnics Association Exemption from the 14-Hour Rule during Independence Day Celebrations**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; granting of application for exemption.

**SUMMARY:** FMCSA announces the granting of an exemption of 55 member-companies of the American Pyrotechnics Association (APA) from FMCSA's regulation prohibiting drivers of commercial motor vehicles (CMVs) from driving after the 14<sup>th</sup> hour after coming on duty. The FMCSA renews the exemption for 45 APA member-companies and grants 10 additional carriers coverage by the exemption, which is applicable during the periods June 28 - July 8, 2013, and June 28 - July 8, 2014, inclusive. The requested renewal of the exemption for one motor carrier is being denied. Additionally, the APA advised FMCSA of the removal from the original renewal application of two companies that are no longer in business or no longer members of the APA. The original application was for 58 carriers; two were removed by APA and one denied by FMCSA, leaving 55 carriers being granted the exemption. Drivers who operate these CMVs in conjunction with staging fireworks shows celebrating Independence Day will be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers will continue to be subject to a prohibition from driving after accumulating 14 hours on duty, the 11-hour driving time limit, and the 60- and 70-hour limits. FMCSA believes that with the terms and conditions in place, APA-

member motor carriers will maintain a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

**DATES:** This exemption is effective during the periods of June 28 (12:01 a.m.) through July 8, 2013 (11:59 p.m.) and from June 28 (12:01 a.m.) through July 8, 2014 (11:59 p.m.).

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

**SUPPLEMENTARY INFORMATION:**

**APA Application for Exemption**

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14<sup>th</sup> hour after coming on duty following 10 consecutive hours off duty. Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the HOS requirements in 49 CFR 395.3(a)(2) for a 2-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381.

The APA, a trade association representing the domestic fireworks industry, applied for an exemption in 2004. Various APA members have held 2-year exemptions during Independence Day periods from 2005 through 2012. The last exemption, for 45 of its members, expired on July 9, 2012. The current application covers 45 members that previously held exemptions and 10 additional member-companies. The original

application was for 58 carriers with two removed by APA and one denied by FMCSA; 55 carriers are being granted the exemption.

The initial APA exemption application for relief from the 14-hour rule was submitted in 2004; a copy of the application is in the docket. That application fully describes the nature of the pyrotechnic operations during a typical Independence Day period.

The CMV drivers employed by APA member-companies are trained pyrotechnicians who hold commercial driver's licenses (CDLs) with hazardous materials (HM) endorsements. They transport fireworks and related equipment by CMVs on a very demanding schedule during a brief Independence Day period, often to remote locations. After they arrive, the drivers are responsible for set-up and staging of the fireworks shows.

The APA states that it is seeking an HOS exemption for the 2013 and 2014 Independence Day periods because compliance with the current 14-hour rule in 49 CFR 395.3(a)(2) by its members would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member-companies. To meet the demand for fireworks shows under the current HOS rules, APA member-companies state that they would be required to hire a second driver for most trips. The APA advises that the result would be a substantial increase in the cost of the fireworks shows – beyond the means of many of its members' customers – and that many Americans would be denied this important component of the celebration of Independence Day. The 55 APA member-companies within the scope of this exemption approval are listed in an appendix to this

notice. A copy of the request for the exemption is included in the docket referenced at the beginning of this notice.

### **Method to Ensure an Equivalent or Greater Level of Safety**

The APA believes that renewal of the exemption for previously exempt carriers and the granting of relief for new carriers will not adversely affect the safety of the fireworks transportation provided by these motor carriers. According to APA, its member-companies have operated under this exemption for eight previous Independence Day periods without a reported motor carrier safety incident. Moreover, it asserts, without the extra duty-period time provided by the exemption, safety would decline because APA drivers would be unable to return to their home base or other safe location after each show. They would be forced to park the CMVs carrying HM 1.1G, 1.3G and 1.4G products in areas less secure than the motor carrier's home base. As a condition of holding the exemption, each motor carrier would be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving the operation of any its CMVs while under this exemption. To date, FMCSA has received no accident notifications, nor is the Agency aware of any accidents reportable under terms of the prior APA exemptions.

In its exemption request, APA asserted that the operational demands of this unique industry minimize the risk of CMV crashes. In the last few days before the 4<sup>th</sup> of July, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display, and normally do so in the early morning when traffic is light. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours off duty in the late afternoon and early

evening prior to the event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers. FMCSA believes that these APA operations conducted under the terms and conditions of this limited exemption will provide a level of safety that, at a minimum, is equivalent to the level of safety achieved without the exemption.

### **Public Comments**

On May 7, 2013, FMCSA published notice of this application, and asked for public comment (78 FR 26690). One set of comments was received. Advocates for Highway and Auto Safety (Advocates) opposed the exemption from the HOS regulations. Their comments are available for review in the docket for this notice.

Advocates objected to this exemption on various grounds: (1) Advocates opposes the issuance of any HOS exemptions, especially “blanket” exemptions; (2) the carriers for which this exemption is requested have had out-of-service (OOS) orders issued during past exemption periods, have OOS rates above National averages, and may be “on alert” in one or more violation categories under FMCSA’s Safety Measurement System; (3) the exemption is unnecessary because the APA has had 8 years during which to develop alternative operational methods that would not require an exemption; (4) claims that the exemption allows safer storage of hazardous materials are questionable; (5) Advocates objects to the length of time FMCSA has taken from receipt of the application to issue this disposition notice; and (6) FMCSA did not adequately investigate and announce the applicant-carriers’ safety records when it published the notice of APA’s exemption application.

### FMCSA Response

Prior to publishing the **Federal Register** notice announcing the receipt of the APA exemption request, FMCSA ensured that the motor carriers involved have a current USDOT registration, Hazardous Materials Safety Permit (if required), minimum required levels of insurance, and are not subject to any “imminent hazard” or other OOS orders. The Agency comprehensively investigated the safety history of each applicant during the review process. FMCSA has reviewed its safety records, including inspection and accident reports, for each applicant motor carrier. The Agency also requested and received a records review of each carrier from the Pipeline and Hazardous Materials Safety Administration (PHMSA).

Because each company is listed in the notice seeking public comment, and each company’s safety performance record is reviewed by the Agency, there is no merit to Advocates’ argument. FMCSA views Advocates’ comments about blanket exemptions versus individual exemptions as a distinction without a substantive difference. Each carrier is listed and subject to the notice-and-comment process, and any individual carrier could be denied based on public comments and/or FMCSA’s assessment. Therefore, the only entity potentially adversely affected by a lengthy process would be an applicant. FMCSA recognizes no potential harm to the public due to the current process. To the contrary, processing an application of this type too far in advance of the relevant event could result in the status of the applicants having changed between the time of the records review and the effective date of the exemption.

With regard to Advocates' suggestion that APA members should have developed alternative means to comply with the HOS regulations without an exemption, FMCSA does not believe reasonable alternatives are necessarily available in many locations. Such alternatives would include locating additional drivers with CDLs and HM endorsements. This is difficult for part-time, holiday-specific work. CDL holders with HM endorsements are likely to be in high demand, given the Transportation Security Administration requirements for a security threat analysis for such drivers. And, as indicated in this notice and APA's application, potential alternatives could drive the cost of the fireworks displays beyond the financial capabilities of many communities.

With regard to the security of alternative storage locations following a fireworks "shoot," many sites do not provide security following a display and may require all vehicles to depart the area. Arrangements can be made for the next community at which a display is planned to begin their access and security upon the planned arrival of the fireworks team.

### **FMCSA Decision**

The FMCSA has evaluated APA's application, the safety records of the companies to which the exemption would apply, and the public comments. The Agency believes that APA member-companies will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)], and grants the requested exemption to the 55 APA member-companies listed in an appendix to this notice.

The exemption requested for one carrier is denied: Arthur Rozzi Pyrotechnics (Rozzi), Maineville, OH, USDOT 2008107. Rozzi is subject to an open investigation and enforcement action by PHMSA, involving violations of the Hazardous Materials Regulations. Under the circumstances, it would be inappropriate to grant Rozzi an exemption.

## **Terms and Conditions of the Exemption**

### Period of the Exemption

The requested exemption from the requirements of 49 CFR 395.3(a)(2) is effective during the periods of June 28 (12:01 a.m.) through July 8, 2013 (11:59 p.m.) and from June 28 (12:01 a.m.) through July 8, 2014 (11:59 p.m.). The exemption will expire on July 8, 2014, at 11:59 p.m. local time.

### Extent of the Exemption

This exemption is restricted to the 55 motor carriers listed in the appendix to this notice and their CMV drivers. The drivers are provided a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving a CMV after the 14<sup>th</sup> hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. This exemption is contingent on each driver driving no more than 11 hours in the 14-hour period after coming on duty as extended by any off-duty or sleeper-berth time in accordance with this exemption. The exemption is further contingent on each driver having a minimum of 10 consecutive hours off duty prior to beginning a new duty period. The carriers and drivers must comply with all other applicable requirements of the



Federal Motor Carrier Safety Regulations (49 CFR parts 350-399) and Hazardous Materials Regulations (49 CFR parts 105-180).

#### Other Conditions

This exemption is contingent upon each carrier maintaining USDOT registration, a Hazardous Materials Safety Permit (if required), minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption must maintain a valid CDL with required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

#### Preemption

During the periods the exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

#### FMCSA Accident Notification

Exempt motor carriers must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification must include the following information:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- c. Driver’s name and driver’s license number,
- d. Vehicle number and State license number,
- e. Number of individuals suffering physical injury,

- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- i. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

#### Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: June 25, 2013

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T. F. Scott Darling  
Chief Counsel

**Appendix to Notice of Renewal and Expansion of American Pyrotechnics Association (APA) Exemption for 55 Motor Carriers from the 14-Hour HOS Rule during 2013 and 2014 Independence Day Celebrations**

	<b>Motor Carrier</b>	<b>Street Address</b>	<b>City, State &amp; Zip Code</b>	<b>DOT #</b>
1.	Alonzo Fireworks Display, Inc.	846 Stillwater Bridge Rd.	Schaghticoke, NY 12154	420639
2.	American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
3.	American Fireworks Display, LLC	P.O. Box 980	Oxford, NY 13830	2115608
4.	AM Pyrotechnics, LLC	2429 East 535th Rd.	Buffalo, MO 65622	1034961
5.	Atlas Enterprises Inc.	6601 Nine Mile Azle Rd	Fort Worth, TX 76135	0116910
6.	Atlas Pyrovision Productions, Inc.	136 Old Sharon Rd.	Jaffrey, NH 03452	789777
7.	B.J. Alan Company	555 Martin Luther King, Jr Blvd.	Youngstown, OH 44502-1102	262140
8.	Central States Fireworks, Inc.	18034 Kincaid Street	Athens, IL 62613	1022659
9.	Colonial Fireworks Company	5225 Telegraph Road	Toledo, OH 43612	177274
10.	East Coast Pyrotechnics, Inc.	4652 Catawba River Rd.	Catawba, SC 29704	545033
11.	Entertainment Fireworks, Inc.	13313 Reeder Road SW	Tenino, WA 98589	680942
12.	Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
13.	Fireworks & Stage FX America	12650 Hwy 67S. Suite B	Lakeside, CA 92040	908304
14.	Fireworks by Grucci, Inc.	1 Grucci Lane	Brookhaven, NY 11719	324490
15.	Fireworks Extravaganza	174 Route 17 North	Rochelle Park, NJ 07662	2064141
16.	Fireworks West Internationale	910 North 3200 West	Logan, UT 84321	245423
17.	Garden State Fireworks, Inc.	383 Carlton Road	Millington, NJ 07946	435878
18.	Gateway Fireworks Displays	PO Box 39327	St Louis, MO 63139	1325301
19.	Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
20.	Hamburg Fireworks Display Inc.	2240 Horns Mill Road SE	Lancaster, OH	395079
21.	Hawaii Explosives & Pyrotechnics, Inc.	17-7850 N. Kulani Road	Mountain View, HI 96771	1375918
22.	Hi-Tech FX, LLC	18060 170th Ave.	Yarmouth, IA 52660	1549055
23.	Hollywood Pyrotechnics, Inc.	1567 Antler Point	Eagan, MN 55122	1061068
24.	Homeland Fireworks, Inc.	P.O. Box 7	Jamieson, OR 97909	1377525
25.	Island Fireworks Co., Inc.	N1597 County Rd VV	Hager City, WI 54014	414583
26.	J&M Displays, Inc.	18064 170th Ave	Yarmouth, IA 52660	377461
27.	Lantis Fireworks, Inc.	130 Sodrac Dr., Box 229	N. Sioux City, SD 57049	534052
28.	Lantis Productions dba Lantis Fireworks and Lasers	799 N. 18150 W.	Fairfield, UT 84013	195428
29.	Legion Fireworks Co., Inc.	10 Legion Lane	Wappingers Falls, NY 12590	554391
30.	Mad Bomber/Planet Productions	PO Box 294, 3999 Hupp Road R31	Kingsbury, IN 46345	777176
31.	Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics	P.P. Box 322	Hallowell, ME 04347	734974
32.	Melrose Pyrotechnics, Inc.	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
33.	Precocious Pyrotechnics, Inc.	4420-278th Ave NW	Belgrade, MN 56312	435931
34.	Pyro Engineering Inc., dba/Bay Fireworks	400 Broadhollow Rd. Ste #3	Farminale, NY 11735	530262
35.	Pyro Shows Inc.	701 W. Central Ave	LaFollette, TN 37766	456818
36.	Pyro Spectacuars, Inc.	3196 N Locust Ave	Rialto, CA 92376	029329
37.	Pyro Spectaculars North, Inc.	5301 Lang Avenue	McClellan, CA 95652	1671438
38.	Pyrotechnic Display, Inc.	8450 W. St. Francis Rd.	Frankfort, IL 60423	1929883

39.	Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.)	302 Wilson Rd.	New Castle, PA 16105	526749
40.	Pyrotecnico, LLC	60 West Ct	Mandeville, LA 70471	548303
41.	Pyrotecnico FX	6965 Speedway Blvd. Suite 115	Las Vegas, NV 89115	1610728
42.	Rainbow Fireworks, Inc.	76 Plum Ave.	Inman, KS 67546	1139643
43.	RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981
44.	Rozzi's Famous Fireworks, Inc.	11605 North Lebanon Rd	Loveland, OH 45140	0483686
45.	Skyworks, Ltd.	13513 W. Carrier Rd.	Carrier, OK 73727	1421047
46.	Spielbauer Fireworks Co, Inc.	220 Roselawn Blvd	Green Bay, WI 54301	046479
47.	Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
48.	Stonebraker-Rocky Mountain Fireworks Co.	5650 Lowell Blvd, Unit E	Denver, CO 80221	0029845
49.	Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
50.	Western Display Fireworks, Ltd.	10946 S. New Era Rd.	Canby, OR 97013	498941
51.	Western Enterprises, Inc.	PO Box 160	Carrier, OK 73727	203517
52.	Western Fireworks, Inc.	14592 Ottaway Road NE	Aurora, OR 97002	838585
53.	Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
54.	Young Explosives Corp.	P.O. Box 18653	Rochester, NY 14618	450304
55.	Zambelli Fireworks MFG, Co., Inc.	PO Box 1463	New Castle, PA 16103	033167

**[FR Doc. 2013-15608 Filed 06/26/2013 at 8:45 am; Publication Date: 06/28/2013]**